Ketua Pengarah Hasil Dalam Negeri v Suruhanjaya Syarikat Malaysia & Anor

HIGH COURT (KUALA LUMPUR) — ORIGINATING SUMMONS NO WA-22NCC-385–08 OF 2018
WONG CHEE LIN JC
12 FEBRUARY 2019

Civil procedure — Disposal of case — Disposal of case on point of law — Plaintiff applied for declaration that dissolution of company void pursuant to s 535(1) of the Companies Act 2016 ('the CA 2016') — Second defendant applied for determination of question of law pursuant to O 14A and O 33 r 2 of the Rules of Court 2012 ('the ROC') — Whether court had jurisdiction under s 535(1) of the CA 2016 to grant order declaring dissolution of company as void after expiration of two-year period from date of company's dissolution as prescribed within s 535(1) — Whether delay in filing application by second defendant was fatal — Whether court had jurisdiction to grant declaration that dissolution of company was void pursuant to court's inherent power, O 1A of the ROC and s 582 of the CA 2016

Companies and Corporations — Winding up — Dissolution — Jurisdiction of court to declare dissolution of company void — Whether court had jurisdiction under s 535(1) of the CA 2016 to grant order declaring dissolution of company as void after expiration of two-year period from date of company's dissolution as prescribed within s 535(1) — Whether court had jurisdiction to grant declaration that dissolution of company was void pursuant to court's inherent power, O 1A of the ROC and s 582 of the CA 2016 — Companies Act 2016 ss 535(1) & 582 — Rules of Court 2012 O 1A, O 14A & O 33 r 2

The plaintiff had filed an application to declare the voluntary dissolution of Mahabuilders Sdn Bhd ('the company') to be void pursuant to s 535(1) of the Companies Act 2016 ('the CA 2016'). The plaintiff's application was made because the plaintiff wished to impose additional income tax on the company for the years of assessment 2012 and 2013. The second defendant who was the liquidator of the company filed an application pursuant to O 14A and O 33 r 2 of the Rules of Court 2012 ('the ROC') for the determination of the following question of law: whether the court had the jurisdiction under s 535(1) of the CA 2016 to grant an order declaring the dissolution of a company void after the expiration of the two-year period from the date of the company's dissolution as prescribed within s 535(1) of the CA 2016 ('the question of law'). The plaintiff raised the issue of delay in filing the application by the second defendant. In relation to the issue of jurisdiction, the plaintiff

submitted that even if the court was of the view that the court had no jurisdiction to grant the declaration under s 535(1) of the CA 2016 after the two-year period, the court still had the inherent power under O 92 of the ROC to order such declaration. Further, the plaintiff also relied on O 1A of the ROC and s 582 of the CA 2016.

Held, dismissing the plaintiff's action against the defendants with no order as to costs:

(1) The court answered the question of law in the negative. In interpreting provisions such as s 535(1) of the CA 2016 which were clear and unambiguous in meaning, the Federal Court had consistently held that such provisions should be given their plain, natural and ordinary meaning. Based on the plain wording of s 535(1) of the CA 2016, it was clear that the said provisions stated that the court's power to make the order declaring the dissolution void could only be made at any time within two years after the date of dissolution. As more than two years had expired from the date of dissolution of the company in the present case, the court had no power to make any order declaring the dissolution of the company void (see paras 9–11, 14 & 42).

(2) Section 45 of the Interpretation Acts 1948 and 1967 stipulated that the court had the power to extend time even upon expiry of the time period stipulated if power was given to the court to extend time in the written law itself. However, in the present case, it was not stated in s 535 or anywhere else in the CA 2016 that the two-year period may be extended by the court. Therefore, the court had no discretion to extend the two-year period stated in s 535(1) of the CA 2016 for the making of the order declaring the dissolution void (see paras 17–19).

(3) The lack of amendment to the wording of s 307 of the Companies Act 1965 through s 535(1) of the CA 2016 despite the other changes made when CA 2016 was enacted could be seen as a clear indication that Parliament did not intend to extend the two-year period from the date of dissolution within which order for the declaration of voidness could be made by the courts (see para 22).

(4) It ought to be noted that in the present case, the second defendant's application was also made pursuant to O 33 r 2 of the ROC. Accordingly, the delay in the filing of this application was not fatal. In any event, the plaintiff had not asserted that the delay had caused it to suffer any prejudice that could not be compensated by an appropriate order for costs (see para 30).

(5) The inherent power of the court was a matter of procedural law and not substantive law. The court could not have inherent power to do something which the substantive law prohibited. In this case, s 535(1) of

the CA 2016 expressly provided that the order declaring dissolution void could only be made within two years after the dissolution of the company. The court could not therefore have inherent jurisdiction to grant the declaration after the period of two years. It had been held that where the rules contained provisions making available sufficient remedies, the court would not invoke its inherent powers especially to override the ROC. In relation to O 1A of the ROC, such provision was not applicable as the court was not dealing with compliance with the ROC (see paras 36 & 39).

(6) Section 582 of the CA 2016 gave power to the court to make validating order in respect of any omission, defect or irregularity in the management or administration of a company under the CA 2016. However, the time period stated in s 535(1) of the CA 2016 was not a time period for the liquidator or any interested person to make an application declaring the dissolution of a company void but the time period regulated when such an order could be granted by the court. This was not a matter concerning the management or administration of a company and accordingly, s 582 of the CA 2016 was not applicable on the facts of the present case. As such, the reliance by the plaintiff on s 582 of the CA 2016 was without basis (see para 41).

[Bahasa Malaysia summary

Plaintif telah memfailkan permohonan untuk mengisytiharkan pembubaran sukarela Mahabuilders Sdn Bhd ('syarikat tersebut') sebagai tidak sah menurut s 535(1) Akta Syarikat 2016 ('Akta 2016'). Permohonan plaintif dibuat kerana plaintif ingin mengenakan cukai pendapatan tambahan kepada syarikat tersebut untuk tahun taksiran 2012 dan 2013. Defendan kedua yang merupakan pelikuidasi syarikat tersebut memfailkan permohonan menurut A 14A dan A 33 k 2 Kaedah-Kaedah Mahkamah 2012 ('Kaedah tersebut') untuk penentuan persoalan undang-undang berikut: sama ada mahkamah mempunyai bidang kuasa di bawah s 535(1) Akta 2016 untuk memberikan perintah deklarasi bahawa pembubaran syarikat tidak sah setelah berakhirnya jangka masa dua tahun dari tarikh pembubaran syarikat seperti yang ditetapkan dalam s 535(1) Akta 2016 ('persoalan undang-undang'). Plaintif membangkitkan isu kelewatan memfailkan permohonan oleh defendan kedua. Berkaitan dengan isu bidang kuasa, plaintif berhujah bahawa walaupun mahkamah berpendapat bahawa mahkamah tidak mempunyai bidang kuasa untuk memberikan deklarasi di bawah s 535(1) Akta 2016 setelah tempoh waktu dua tahun, mahkamah masih mempunyai kuasa sedia ada di bawah A 92 Kaedah tersebut untuk memerintahkan pengisytiharan tersebut. Selanjutnya, plaintif juga bergantung kepada A 1A Kaedah tersebut dan s 582 Akta 2016.

Diputuskan, menolak tindakan plaintif terhadap defendan-defendan tanpa perintah berkaitan kos:

(1) Mahkamah menjawab persoalan undang-undang secara negatif. Dalam menafsirkan peruntukan seperti s 535(1) Akta 2016 yang maksudnya jelas dan tidak berubah, Mahkamah Persekutuan secara konsisten berpendapat bahawa peruntukan tersebut harus diberi makna yang nyata, semula jadi dan biasa. Berdasarkan ayat dalam s 535(1) Akta 2016 yang nyata, jelas bahawa peruntukan tersebut menyatakan bahawa kuasa mahkamah untuk membuat perintah deklarasi bahawa pembubaran tidak sah hanya boleh dibuat pada bila-bila masa dalam tempoh dua tahun setelah tarikh pembubaran. Oleh kerana lebih dari dua tahun telah berakhir dari tarikh pembubaran syarikat dalam kes ini, mahkamah tidak mempunyai kuasa untuk membuat perintah deklarasi bahawa pembubaran syarikat tersebut tidak sah (lihat perenggan 9–11, 14 & 42).

(2) Seksyen 45 Akta Tafsiran 1948 dan 1967 menetapkan bahawa mahkamah mempunyai kuasa untuk melanjutkan masa walaupun setelah tamatnya tempoh waktu yang ditetapkan sekiranya kuasa diberikan kepada mahkamah untuk melanjutkan masa dalam undang-undang bertulis itu sendiri. Namun, dalam kes ini, tidak dinyatakan dalam s 535 atau di mana pun di dalam Akta 2016 bahawa tempoh dua tahun boleh dilanjutkan oleh mahkamah. Oleh itu, mahkamah tidak mempunyai budi bicara untuk melanjutkan tempoh waktu dua tahun yang dinyatakan dalam s 535(1) Akta 2016 untuk membuat perintah deklarasi bahawa pembubaran tersebut tidak sah (lihat perenggan 17–19).

(3) Ketiadaan pindaan ke atas ayat dalam s 307 Akta Syarikat 1965 melalui s 535(1) Akta 2016 walaupun terdapat perubahan lain yang dibuat ketika Akta 2016 digubal boleh dilihat sebagai petunjuk yang jelas bahawa Parlimen tidak bermaksud untuk melanjutkan tempoh dua tahun dari tarikh pembubaran di mana perintah pengisytiharan ketidaksahan boleh dibuat oleh mahkamah (lihat perenggan 22).

(4) Harus diingat bahawa dalam kes ini, permohonan defendan kedua juga dibuat berdasarkan A 33 k 2 Kaedah tersebut. Oleh itu, kelewatan pemfailan permohonan ini tidak fatal. Dalam keadaan apa pun, plaintif tidak menegaskan bahawa kelewatan tersebut menyebabkannya mengalami prejudis yang tidak dapat diganti dengan perintah kos yang sesuai (lihat perenggan 30).

(5) Kuasa sedia ada mahkamah adalah permasalahan undang-undang prosedur dan bukan undang-undang substantif. Mahkamah tidak boleh mempunyai kuasa sedia ada untuk melakukan sesuatu yang dilarang oleh undang-undang substantif. Dalam hal ini, s 535(1) Akta 2016 dengan jelas memperuntukkan bahawa perintah yang menyatakan pembubaran tidak sah hanya boleh dibuat dalam masa dua tahun setelah pembubaran syarikat. Oleh itu, mahkamah tidak boleh mempunyai bidang kuasa sedia ada untuk memberikan deklarasi tersebut setelah tamat tempoh

dua tahun. Telah diputuskan bahawa apabila sesuatu peraturan mempunyai peruntukan yang menyediakan remedi yang cukup, mahkamah tidak akan menggunakan kuasa sedia adanya terutama untuk menggantikan Kaedah tersebut. Berkaitan dengan A 1A Kaedah tersebut, peruntukan tersebut tidak terpakai kerana mahkamah bukan menangani isu ketidakpatuhan kepada Kaedah tersebut (lihat perenggan 36 & 39).

(6) Seksyen 582 Akta 2016 memberi kuasa kepada mahkamah untuk membuat perintah pengesahan berkenaan dengan apa-apa kelalaian, kecacatan atau penyelewengan dalam pengurusan atau pentadbiran syarikat di bawah Akta 2016. Walau bagaimanapun, tempoh waktu yang dinyatakan dalam s 535(1) Akta 2016 bukanlah tempoh waktu bagi pelikuidasi atau mana-mana pihak yang berkepentingan untuk membuat permohonan deklarasi bahawa pembubaran syarikat tidak sah tetapi merupakan tempoh waktu yang menetapkan bila perintah tersebut boleh diberikan oleh mahkamah. Ini bukan isu berkaitan dengan pengurusan atau pentadbiran syarikat dan oleh itu, s 582 Akta 2016 tidak terpakai pada fakta kes ini. Oleh yang demikian, kebergantungan oleh plaintif pada s 582 Akta 2016 adalah tidak berasas (lihat perenggan 41).]

Cases referred to

Andrew Lee Siew Ling v United Overseas Bank (M) Bhd [2013] 1 MLJ 449; [2013] 1 CLJ 24, FC (refd)

Dayapi Holdings Sdn Bhd & Anor v Arab-Malaysian Finance Bhd & Anor [2009] 7 MLJ 627; [2009] 1 CLJ 916, HC (distd)

Dinesh Kanavaji a/l Kanawagi & Anor v Virgin Properties Sdn Bhd & Anor [2016] 2 MLJ 525; [2016] 4 CLJ 492, CA (refd)

Foo Loke Ying & Anor v Television Broadcasts Ltd & Ors [1985] 2 MLJ 35; [1985] CLJ Rep 122, SC (refd)

Low Peck Lim v Ng Kong Ling & Ors [2011] MLJU 1110; [2011] 1 LNS 1562, HC (refd)

Majlis Agama Islam Selangor v Bong Boon Chuen & Ors [2009] 6 MLJ 307; [2009] 6 CLJ 405, FC (refd)

Mohd Bakri @ Bakhari bin Mohd Noor v Ketua Pengarah Insolvensi for the assets and liability of Sykt Taba Silver Sdn Bhd [2016] 7 MLJ 124; [2015] 3 CLJ 1114, HC (refd)

NKM Holdings Sdn Bhd v Pan Malaysia Wood Bhd [1987] 1 MLJ 39; [1986] 1 LNS 79, SC (refd)

Pemungut Hasil Tanah, Kota Tinggi v United Malayan Banking Corpn Bhd [1981] 2 MLJ 264, FC (refd)

Permodalan MBF Sdn Bhd v Tan Sri Datuk Seri Hamzah bin Abu Samah & Ors [1988] 1 MLJ 178, SC (refd)

Tenaga Nasional Bhd v Pear Island Resort Development Sdn Bhd [2017] MLJU 1193; [2017] 9 CLJ 185, FC (refd)

Legislation referred to

Companies Act 1948 [UK] s 352
Companies Act 1965 (repealed by the Companies Act 2016) ss 257, 272(3), (5), 307, 307(1), 355, 535
Companies Act 1985 [UK] s 651
Companies Act 2006 [UK] ss 1030, 1031
Companies Act 2016 ss 535, 535(1), 582
Companies (Consolidation) Act 1908 [UK] s 223
Companies Ordinance (Chapter 622) [HK] s 765
Companies (Winding up and Miscellaneous Provisions) Ordinance (Chapter 32) [HK] s 290
Interpretation Acts 1948 and 1967 s 45
Rules of Court 2012 O 1A, O 14A, O 33 r 2, O 92

Mohd Shafuddin bin Hasan (Nurul Nasyrah bt Mohd Nasir and Liz Ellyna bt Mohd Zaid with him) for the plaintiff.
DP Naban (S Saravana Kumar, Chris Toh Pei Roo and Tan Jia Xin with him) (Lee Hishammuddin Allen & Gledhill) for the defendant.

Wong Chee Lin JC:

[1] Mahabuilders Sdn Bhd was wound up voluntarily and thereafter dissolved on 20 August 2018. On 17 May 2018, the plaintiff, Ketua Pengarah Hasil Dalam Negeri filed an originating summons to declare the dissolution void pursuant to s 535(1) of the Companies Act 2016 ('the CA 2016'). The second defendant who was the liquidator of the company filed an application pursuant to O 14A and O 33 r 2 of the Rules of Court 2012 for the determination of a question of law. I have made an order in favour of the second defendant and granted the consequential order that the action against both the defendants (the first defendant being Suruhanjaya Syarikat Malaysia ('the SSM')) be dismissed. These are the full grounds for my decision.

SALIENT BACKGROUND FACTS

[2] On 1 March 2016, the directors of Mahabuilders Sdn Bhd commenced its voluntary winding up by making a written declaration of solvency under s 257 of the Companies Act 1965 ('the CA 1965').

[3] On 20 May 2016 , Mahabuilders Sdn Bhd conducted its final meeting and lodged a return of the holding of this final meeting with the Registrar of Companies under s 272(3) of the CA 1965.

[4] On 20 August 2016, ie on the expiration of three months after the lodging of the return of the holding of this final meeting, the dissolution of the

company was completed under s 272(5) of the CA 1965.

[5] The plaintiff filed an originating summons under s 535(1) of the Companies Act 2016 ('the CA 2016') on 17 May 2018 for a declaration that the dissolution of the company was void. The plaintiff wished to impose additional income tax on the company for the years of assessment 2012 and 2013.

[6] As there are various disputes of fact in the matter, the second defendant being the liquidator of the company, successfully applied to convert the originating summons into a writ on 8 August 2018. Thereafter, pleadings were filed and the matter was fixed for trial commencing 11 February 2018.

[7] By an application dated 31 January 2019, the second defendant applied under O 14A and O 33 r 2 of the Rules of Court 2012 for the determination of the following question of law:

> Whether the court has the jurisdiction under section 535(1) of the CA 2016 to grant an order declaring the dissolution of a company void after the expiration of the two year period from the date of the company's dissolution as prescribed within section 535(1) itself.

FINDINGS OF THE COURT

[8] Section 535(1) of the CA 2016 provides that:

> Where a company has been dissolved, the Court may, at any time within two years after the date of the dissolution, on an application of the liquidator of the company or of any other person who appears to the Court to be interested, make an order upon such terms as the Court thinks fit declaring the dissolution to have been void, and such proceedings may be taken as might have been taken if the company had not been dissolved.

[9] Based on the plain wording of the section itself, it is clear to me that the order declaring the dissolution void must be made within two years of the date of the dissolution and it is not the case that the application for such a declaration must be made within two years of the date of dissolution.

[10] It is settled law that where the meaning of a statute is plain and obvious, it must be given effect to.

[11] In interpreting provisions such as s 535(1) of the CA 2016 which are clear and unambiguous in meaning, the Federal Court has consistently held that such provisions should be given their plain, natural and ordinary meaning:

(a) *Andrew Lee Siew Ling v United Overseas Bank (M) Bhd* [2013] 1 MLJ

449; [2013] 1 CLJ 24:

> On the proper application of the provision of the said s 17A of the Interpretation Act we would refer to the case of *All Malayan Estates Staff Union v Rajasegaran & Ors* [2006] 6 MLJ 97 wherein this court has laid down the principles, inter alia, as follows:
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> In summarising the principles governing the application of the purposive approach to interpretation, Craies on Legislation (8th Ed), says at p 566:
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> (1) Legislation is always to be understood first in accordance with its plain meaning.

(b) *Tenaga Nasional Bhd v Pear Island Resort Development Sdn Bhd* [2017] MLJU 1193; [2017] 9 CLJ 185:

> [35] There is no dearth of authorities on the principles of construction of a statute. The first thing to ask is what is the natural or ordinary meaning of the word or phrase in its context in the statute. Where the language in the statute is clear and without any ambiguity effect must be given to it: see *Sri Bangunan Sdn Bhd v Majlis Perbandaran Pulau Pinang & Anor* .

[12] Further, our superior courts have also held that in interpreting statutory provisions, the courts should merely give effect to the laws enacted by Parliament and should not usurp the legislative function by extending a statute 'to meet a case for which provision has clearly and undoubtedly not been made':

(a) *Pemungut Hasil Tanah, Kota Tinggi v United Malayan Banking Corpn Bhd* [1981] 2 MLJ 264:

> The relevant provisions of the Code provide a complete code regulating the respective rights, duties and liabilities of the State Authority and its agents on the one hand and the registered proprietor of alienated land on the other in relation to the rent payable in respect thereof and no recourse can legitimately be had to look beyond their specific terms to seek any relief for the alleviation of any complaint of hardship. Mr Hepworth however suggests that s 134(2) should properly be read with the interpolation of the words 'on the grounds of its being invalid in law' after its opening words 'No order of the Collector under s 100 or 129 shall be set aside' so that s 134(2) should in fact read 'No order of the Collector under s 100 or 129 shall be set aside on the grounds of its being invalid law by any court except ... ', contending, as we understand him, that this will enable the introduction of equity to mitigate the rigours of that statutory provision and the forfeiture can therefore be challenged on its validity in equity.
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> The short answer to this contention is that a statute may not be extended to meet a case for which provision has clearly and undoubtedly not been made. In *Magor and St Mellons RDC v Newport Corpn* [1952] AC 189 the House of Lords held that in the construction of a statute the duty of the court is limited to interpreting the words used by the legislature and it has not power to fill in

A any gaps disclosed, and that to do so would be to usurp the function of the legislature. Where the enactment of the legislature in clear and unequivocal language is capable of only one meaning, it must be enforced however harsh the result may be, and we need only refer to *Cartledge v E Jopling & Sons Ltd* [1963] AC 758 as the locus classicus illustrating this principle. It is hardly B necessary for us to stress that it is not the function of the courts to rewrite statutes — that is a role reserved for the domain of the legislative halls.

(b) *NKM Holdings Sdn Bhd v Pan Malaysia Wood Bhd* [1987] 1 MLJ 39; [1986] 1 LNS 79:

C It must always be borne in mind that we are judges, not legislators. The constitutional function of the courts is not only to interpret but also to enforce the laws enacted by Parliament. In enforcing the law we must be the first to obey it. It should be noted that the power of a court to proceed in a particular course of administering justice, was one of substance and not merely of form. The duty of the court, and its only duty, is to expand the D language of Act in accordance with the settled rules of construction.

[13] In the words of Supreme Court in *Foo Loke Ying & Anor v Television Broadcasts Ltd & Ors* [1985] 2 MLJ 35; [1985] CLJ Rep 122:

E The court however is not at liberty to treat words in a statute as mere tautology or surplusage unless they are wholly meaningless. On the presumption that Parliament does nothing in vain, the court must endeavour to give significance to every word of an enactment, and it is presumed that if a word or phrase appears in a statute, it was put there for a purpose and must not be disregarded.

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[14] There are at least two decisions of the High Court in Malaysia which state that pursuant to s 535(1) of the CA 2016 (in pari material with s 307(1) of the CA 1965) the requirement is that the application to declare the dissolution void must be made within two years of the date of the dissolution. G However, I am of the view that a careful reading of the provision in its entirety will show that no time limit is provided for the making of the application but the time limit of two years after the date of dissolution is the time limit provided for the making of an order declaring the dissolution void. I am not bound to follow those decisions of the High Court and accordingly, I would H decline to follow them. In my view, the wording of s 535(1) of the CA 2016 is very clear and it provides that the court's power to make the order declaring the dissolution void can only be made at any time within two years after the date of dissolution. As more than two years had expired from the date of dissolution of the company in the present case, the court has no power to make any order I declaring the dissolution of the company void.

[15] In one of the cases, *Mohd Bakri @ Bakhari bin Mohd Noor v Ketua Pengarah Insolvensi for the assets and liability of Sykt Taba Silver Sdn Bhd* [2016] 7 MLJ 124; [2015] 3 CLJ 1114, the High Court, in an application under

s 307(1) of the CA 1965 said that the court, as with most applications that sets a time period, has the discretionary power to allow an application made beyond the two year period provided the applicant provides convincing reasons for the delay.

[16] I am of the view that there has been no inordinate or inexcusable delay on the part of the plaintiff in filing the originating summons under s 535(1) of the CA 2016. Although the plaintiff was informed that the company had been dissolved in February 2017, the fact of the matter is that the plaintiff only discovered subsequently that certain letters purportedly sent by the plaintiff to the company and the liquidator were in fact not sent by the plaintiff. This accounts for the delay in filing of the originating summons. The plaintiff cannot be faulted for filing an originating summons and not filing a writ in the first place, despite knowing that there are serious disputes of fact because the Rules of Court require applications under the CA 2016 to be filed by way of an originating summons. The plaintiff did not ultimately object strenuously to the conversion of the originating summons into a writ.

[17] However, the question is whether the court has the power to grant an extension of the two year period. It is not stated in s 535 or anywhere else in the CA 2016 that the two year period may be extended by the court.

[18] Section 45 of the Interpretation Acts 1948 and 1967 stipulates that the court has the power to extend time even upon expiry of the time period stipulated if power is given to the court to extend time in the written law itself. Section 45 provides that:

> Where in any written law a time is prescribed for doing any act or taking any proceedings and power is given to a court or other authority to extend that time, the power may be exercised by the court or authority although the application for its exercise is not made until after the expiration of the time prescribed.

[19] There is no such power given in the present case and so I am of the view that I have no discretion to extend the two year period stated in s 535(1) of the CA 2016 for the making of the order declaring the dissolution void.

[20] Other jurisdictions such as Hong Kong and the United Kingdom had the same provision as s 535(1) of the CA 2016 but they had all subsequently amended their provisions.

[21] It is to be noted that in repealing the CA 1965 and enacting the CA 2016, Parliament could have amended or removed the two-year time period in s 535(1) of the CA 2016 should it have intended to do so. However, unlike jurisdictions such as Hong Kong and the United Kingdom, Parliament has merely adopted the wording of s 307 of the CA 1965 in its entirety.

[22] The lack of any amendment to the wording of s 307 of the CA 1965 through s 535(1) of the CA 2016 despite the other changes made when CA 2016 was enacted can be seen as a clear indication that Parliament did not intend to extend the two year period from the date of dissolution within which an order for the declaration of voidness could be made by the courts.

[23] In Hong Kong, s 290 of the Companies (Winding up and Miscellaneous Provisions) Ordinance (Cap 32) ('the Cap 32 Hong Kong') ie the provision which allows the courts to declare the dissolution of a company to have been void was amended in 1997 to allow for applications for extension of the two-year period to be made:

> 290. Power of court to declare dissolution of company void
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> (1) Subject to subsection (1A), in the case of a company which has been dissolved under section 226A, 227, 239 or 248, the court may at any time within 2 years of the date of the dissolution, on an application being made for the purpose by the liquidator of the company or by any other person who appears to the court to be interested, make an order, upon such terms as the court thinks fit, declaring the dissolution to have been void, and thereupon such proceedings may be taken as might have been taken if the company had not been dissolved.
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> (Amended 75 of 1993 s 17)
>
> (1A) The liquidator of the company or any other person who appears to the court to be interested may at any time apply to extend the period of 2 years referred to in subsection (1) and the court may so extend, on such terms and conditions as seem to it just and expedient, if it is satisfied that there are exceptional circumstances justifying the extension.
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> (Added 75 of 1993 s 17).

[24] Subsequently, when Cap 32 Hong Kong was repealed and replaced by the new Companies Ordinance (Cap 622 Hong Kong), s 765 of the Cap 622 Hong Kong was amended to:

(a) amend the two-year period to 20 years; and

(b) expressly stipulate the applicability of the time period to the date on which the application to restore was made, rather than the date on which the order to restore was given.

> 765. Application to Court for restoration
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> (4) An application to the Court for the restoration of the company to the Companies Register may be made —
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> (a) by a person who was a director or member or creditor of the company; or

(b) by any other person, including the Government, who appears to the Court to have an interest in the matter

766. When application must be made

(1) Subject to subsections (2) and (4) —

(c) an application under section 765(1) must be made within 20 years after the date on which the notice was published in the Gazette under section 291(6), or on which the order was made undersection 291A(1), of the predecessor Ordinance;

(d) an application under section 765(2) must be made within 20 years of the deregistration; and

(e) an application under section 765(4) must be made within 20 years after the date of the dissolution.

[25] In the United Kingdom, prior to the enactment of the Companies Act 2006 ('the UK CA 2006'), the provisions which are in pari material to s 535 of the CA 2016 contained exactly the same wording as s 535 of the CA 1965.

(a) s 223 of the Companies (Consolidation) Act 1908;

(b) s 352 of the Companies Act 1948; and

(c) s 651 of the Companies Act 1985.

[26] However, amongst others, in enacting the UK CA 2006 has altered the previous position by:

(a) removing the stipulation of the two-year time period within which an order for restoration should be made in s 1031 of the UK CA 2006; and

(b) expressly stipulated the time period by which applications to restore should be made under particular circumstances in s 1030 of the UK CA 2006.

[27] I will now deal with the issues raised by the plaintiff.

[28] One issue raised by the plaintiff is the delay in the filing of this application by the second sefendant. Learned counsel for the second defendant admitted candidly that he did not realise the implication of s 535(1) of the CA 2016 at an earlier stage. This application was filed 11 days prior to the hearing date of the action and resulted in an adjournment of the action.

[29] In *Dayapi Holdings Sdn Bhd & Anor v Arab-Malaysian Finance Bhd & Anor* [2009] 7 MLJ 627; [2009] 1 CLJ 916, the court held, inter alia, that an O 14A application may only be invoked at an early stage of the proceedings. The procedure cannot be invoked at a very late stage of the proceedings. In that

A case, the O 14A application was made by the parties at a very late stage of the proceedings: very late in both senses, that is to say, in terms of time as well as in terms of the progress of the proceeding. In terms of time, the O 14A application was only made 16 years later. In terms of the progress of the proceeding, at the time when the O 14A application was made, the case
B management procedure had more or less been completed and the case had been set down for trial. The court said this:

> ... I would rule without hesitation that the right to invoke an O 14A application had certainly ceased once the case had reached the final stage of case management (meaning the common agreed bundles of documents, the statement of agreed facts
C and the statement of agreed main issues have been filed and served) and the case had been set down for trial ... In my judgment, when the proceeding has reached such an advanced stage of the proceedings or had practically reached the trial stage, as has happened in the present case, the appropriate course to adopt, should any party be of the view that the cause could be disposed of without the need of a normal trial,
D is not to invoke O 14A but to invoke O 33 r 2, r 3(2) and r 5 of the RHC.

[30] It should be noted that in this case, the second defendant's application was also made pursuant to O 33 r 2 of the Rules of Court. Accordingly, the
E delay in the filing of this application is not fatal. ln any event, the plaintiff has not asserted that the delay had caused it to suffer any prejudice that could not be compensated by an appropriate order for costs.

[31] Also, the *Dayapi* case can be distinguished because there was a 16 year
F delay in that case. In the present case, it was only obvious that the court had no power to make the order declaring the dissolution void after 20 August 2018 so the delay was not inordinate.

[32] In the case of *Low Peck Lim v Ng Kong Ling & Ors* [2011] MLJU 1110;
G [2011] 1 LNS 1562 this is what the court said:

> The plaintiff contends that it is too late for these applications to be filed as the matter has now reached the final stage of case management preparatory to setting the case down for trial. The case of *Dayapi Holdings Sdn Bhd & Anor v Arab-Malaysian Finance Bhd & Anor* [2009] 7 MLJ 627 was cited in support of the
H proposition that the parties could no longer invoke O 14A when the case has reached such a stage. With respect, in *Dayapi*'s case, the O 14A application was dismissed not so much on the lateness of the filing of the O 14A application but more on the issue of the suitability of the matter before the court to be disposed by way of an O 14A application as can be readily seen from the grounds of judgment.
>
I Be that as it may, an O 14A application can be made 'at any stage of the proceedings' pursuant to O 14A r 1(1) and therefore I find no merit in this preliminary objection.

[33] I would similarly rule that delay is not fatal to the second defendant's application in this case. The question of law framed is very suitable for a

determination prior to the trial of the action and if it is answered in favour of the second defendant, a long, costly and protracted trial can be avoided. In this case, the plaintiff has 11 witnesses and the second defendant has two witnesses. There would be a speedy conclusion to the matter and a saving of costs and judicial time for the court if the question of law were to be determined.

[34] It was submitted for the plaintiff, firstly, that upon a purposive construction of s 535(1) of the CA 2016, what it said is that the application for declaring the dissolution void must be made within two years of the date of dissolution. I have already ruled that I am not in agreement with that submission and I am of the view that upon a literal interpretation of s 535(1) of the CA 2016, the order declaring the dissolution void can only be made within two years after the date of dissolution of the company.

[35] It is next submitted for the plaintiff that even if the court was of the view that it did not have jurisdiction to grant the declaration under s 535(1) of the CA 2016 after the two year period, the court still have the inherent power under O 92 of the Rules of Court to grant the order or declaration sought by the plaintiff.

[36] The short answer to this submission is that the inherent power of the court is a matter of procedural law and not substantive law. The court cannot have inherent power to do something which the substantive law prohibits. In this case, s 535(1) of the CA 2016 expressly provides that the order declaring the dissolution void can only be made within two years after the dissolution of the company. The court cannot therefore have inherent jurisdiction to grant the declaration after the period of two years. It has been held that where the rules contain provisions making available sufficient remedies, the court will not invoke its inherent powers especially to override the rules of court (see *Permodalan MBF Sdn Bhd v Tan Sri Datuk Seri Hamzah bin Abu Samah & Ors* [1988] 1 MLJ 178 and *Majlis Agama Islam Selangor v Bong Boon Chuen & Ors* [2009] 6 MLJ 307; [2009] 6 CLJ 405).

[37] By analogy, if there is specific written law giving the court the power to make a certain order by a certain deadline, the court will not invoke its inherent powers to override the provision of that specific law or act in conflict of the law.

[38] It is also submitted for the plaintiff that the court has jurisdiction to grant the declaration pursuant to O 1A of the Rules of Court 2012 which provides as follows:

> Regard shall be to justice (O 1A)
>
> In administering these Rules, the court or a Judge shall have regard to the overriding interest of justice and not only to the technical non-compliance with these Rules.

[39] The short answer to this is that O 1A is not applicable as we are not dealing with compliance with the Rules of Court in the present case. We are construing the meaning of s 535(1) of the CA 2016.

[40] Lastly, the plaintiff relied on s 582 of the CA 2016 which provides as follows:

> (1) No proceeding under this Act shall be invalidated by any defect, irregularity or deficiency of notice or time unless the Court is of the opinion that substantial injustice has been or may be caused which cannot be remedied by an order of the Court.
>
> (4) The Court, whether the company is in process of being wound up or not, may extend or abridge any time for doing any act or taking any proceeding allowed or limited by this Act upon such terms, if any, as the justice of the case may require and any such extension may be ordered although the application for the same is not made until after the time originally allowed or limited.

[41] I am of the view that s 582 (in pari materia with s 355 of the CA 1965) gives power to the court to make a validating order in respect of any omission, defect or irregularity in the management or administration of a company under the Companies Act (see *Dinesh Kanavaji a/l Kanawagi & Anor v Virgin Properties Sdn Bhd & Anor* [2016] 2 MLJ 525; [2016] 4 CLJ 492). However, the time period stated in s 535(1) of the CA 2016 is not a time period for the liquidator or any interested person to make an application declaring the dissolution of a company void but the time period regulates when such an order can be granted by the court. This is not a matter concerning the management or administration of a company and accordingly, s 582 of the CA 2016 is not applicable on the facts of the present case. Accordingly, I am of the view that the reliance by the plaintiff on s 582 of the CA 2016 is without basis.

[42] In the circumstances of the case, I would answer the question of law, whether the court has the jurisdiction under s 535(1) of the CA 2016 to grant an order declaring the dissolution of a company void after the expiration of the two year period from the date of the company's dissolution as prescribed within s 535(1) itself to be in the negative and I make the consequential order that the action against the defendants be dismissed. However, I make no order as to costs.

Plaintiff's action against defendants dismissed with no order as to costs.

Reported by Dzulqarnain bin Ab Fatar